

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EUGENE WZOREK,)
) Docket No. 84 C 9978
Plaintiff,)
) Chicago, Illinois
v.) July 6, 1988
) 10:00 a.m.
THE CITY OF CHICAGO,)
)
Defendant)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BRIAN BARNETT DUFF

PRESENT:

For the Plaintiff: EUGENE WZOREK (Pro Se)

For the Defendant: MITCHELL EX
MARY SMITH
Assistant Corporation Counsel
610 City Hall
Chicago, Illinois 60602

Court Reporter: Lois A. LaCorte
219 South Dearborn
Chicago, Illinois 60604

1 THE COURT: You were going to take the stand in
2 rebuttal, Mr. Wzorek. Go ahead.

3 MR. WZOREK: Can I make an argument?

4 THE COURT: No, it's not argument. You should
5 understand there is a difference between argument, which I'm
6 going to give you a chance to argue, and testimony, which is
7 evidence.

8 Now you're under oath and you took the stand
9 earlier.

10 MR. WZOREK: Okay.

11 THE COURT: And some other people took the stand and
12 said some things and in their questions you wanted to argue
13 with them.

14 MR. WZOREK: Oh, that kind of stuff.

15 THE COURT: And you wanted to say that it wasn't
16 so. So what you're being allowed to do is to testify, not
17 to argue.

18 MR. WZOREK: Okay.

19 THE COURT: Not explain things, but testify about
20 specific things that you say other people said that you don't
21 think are true.

22 MR. WZOREK: Oh, okay.

23 THE COURT: You're not ready to do that?

24 MR. WZOREK: No, I'll be ready then, because, you
25 know, I got the argument written down like you said.

1 THE COURT: I don't want to hear any argument.

2 MR. WZOREK: No, but I'm not going to say that. I'm
3 just going to give testimony.

4 THE COURT: They'll object and I'll sustain them if
5 you argue.

6 MR. WZOREK: I'm just going to disagree, right, with
7 what other people said?

8 THE COURT: You say what you think they said is
9 wrong. In other words, you get a chance to testify. I told
10 you earlier I would let you go in rebuttal when I stopped you
11 from trying to say what you thought the version was when you
12 were asking the questions. That's not allowed.

13 And I told you I would allow you --

14 MR. WZOREK: I give my own version now of what
15 happened.

16 THE COURT: Yes. That's what I told you.

17 MR. WZOREK: See, I didn't catch the word "rebuttal,"
18 and when you said, "Give your own version" --

19 THE COURT: That's rebuttal.

20 EUGENE WZOREK,
21 Called as a witness herein, duly sworn, testified in the
22 narrative as follows:

23 THE WITNESS: About the write-ups, your Honor, about
24 not having a helmet, I was in the truck and at that time
25 Sewer Department employees do not wear a helmet in the

1 truck. There is no doubt to that one.

2 I didn't have a helmet because my helmet was stolen
3 and I paid \$12.50 to one of the bosses to give me one.

4 At that time the helmet charge also is wrong because
5 there were three other men with me that got reprimanded for
6 not having a helmet. They were Anthony King, Carl Gibbons
7 and Reckless. I don't know how to say his first name, you
8 know, it's Ulysses, I think.

9 And the bosses came out on the street and I had to
10 be in the truck because the only reason they came to the
11 street was because I was on the radio telling them where we
12 were and Mr. Dudzinski's order was to stay in the truck and
13 stay by the radio, "I'll tell you what to do," because I
14 asked him, "Should I tell these guys to come in," because
15 they were working like a block away. There was all crowded
16 people and traffic.

17 He says, "No, stay there and I'll call you again."

18 MR. EX: Objection, hearsay, your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Then he finally called me another
21 fifteen minutes later, but he called me and said him and
22 Morris O'Connor from downtown, the First District, were
23 coming out. He says, "Don't move, stay where you're at," so
24 I stayed by the radio.

25 When they came out -- the bosses are supposed to

1 wear white helmets when they come on the job too, okay, so
2 they come out and I was sitting in the truck and then they
3 starting saying -- and there was a lady there, an old lady
4 and she had water in the basement, and Reckless, the older
5 guy, felt sorry for her so he stayed there four hours doing
6 this job.

7 Now, you're not supposed to stay four hours, but he
8 just was helping the old lady and she was really old and she
9 was crying and stuff like that, you know.

10 So then the bosses come out and Morris and Ray were
11 talking in front of the truck by me, you know, on the side,
12 and he goes, "Quigley heard this," you know.

13 MR. EX: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: He says, "Quigley heard this. You got
16 to do something." He says, "You got to write these guys up
17 because he knows." They were afraid of Quigley, because Ray
18 even told me he was afraid of Quigley.

19 So he goes, "What am I going to write him up for,"
20 you know, me, he says, "The other three guys didn't have
21 their helmets on." He says, "Write him up for a helmet," and
22 then I said to Morris, I says, "Hey, Morris," you know, just
23 in that tone, I says, "You can't write me up for that. I'm
24 in the truck and you owe me \$12.50, you know, for my helmet."

25 He goes, "It don't matter, these write-ups, you can

1 get twenty of them, they don't mean a thing, you know," and
 2 this was 1981 before Eugene Barnes gave any kind of order
 3 like that.

4 So we get back to the yard and Ray was sitting at
 5 the desk -- that was Mr. Dudzinski that was here-- and I
 6 says, "I don't want to sign that," I says, "You know, I don't
 7 think I deserve that."

8 He goes, "Please, please sign it." And he says,
 9 "Don't worry about it," he says, "The old man has got to be
 10 happy. You got to make the old man happy."

11 So then I signed it for him. He said it wouldn't
 12 mean nothing. So that was the deal on that one.

13 The provincial dock now that he is talking about, I
 14 was working on Lake Shore Drive in a truck, 157, that's a
 15 dump truck.

16 Mr. Neri come back from having a heart attack so he
 17 took the job of being a, what do you call, a man in the yard
 18 that does all the odd things.

19 If someone needs a driver, that guy is an extra man,
 20 he goes. That used to be my job. You can go all over the
 21 city. You work nights when they need a guy when it's raining
 22 and all that stuff.

23 But at this time I was on 157. I wasn't going to
 24 come to work that day because I was sick, but Quigley had a
 25 rule that in other words, if you were off three days, you

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1 have to go downtown, you have got to be fingerprinted, you
2 have got to do this.

3 So I figured I'm going to come in at twelve o'clock,
4 and I'll go home, that will leave me only two and a half days
5 off, go to the doctor and get my shots and everything, and
6 then I can come in Monday and I don't have to go through this
7 garbage, you know, of, you know, getting fingerprinted.

8 So we get a call at 10:00 -- the foreman always
9 calls in at 10:00 -- and Ray says, "Come in. It's urgent."

10 So we come in, we come in the door, I said, "Ray,
11 I'm going home, I'm sick." He says, "You can't, Quigley wants
12 you.

13 MR. EX: Objection, hearsay.

14 THE COURT: Overruled.

15 THE WITNESS: When anybody ever mentioned Quigley at
16 400, these guys shaked, let me tell you. Anybody could tell
17 you that that was working there.

18 So I says, "I'm sick. I don't want to go." I said,
19 "Send Neri, you know, he is the extra man." I said, "Why
20 should I go on the street, and what if I get in an accident
21 or something and hurt somebody, you know," and I was going
22 back and forth to the washroom and I had, you know, infection
23 in my stomach and I had the flu.

24 He goes, "You tell him, I'm not telling Quigley," so
25 he is handing me the phone.

1 So when I got on the phone I didn't talk to Quigley,
2 I just talked to Monico, and I called him Jim, because I knew
3 him.

4 I says, "Jim," I said, "I'm not coming. I'm sick,
5 I'm going to the doctor." He says, "You don't feel good?"
6 And I says, "Yeah, I don't feel good." I said, "I'll bring
7 you a note, because there is some decision with me and Ray."

8 So he says, "No, don't bring me no note. You don't
9 need no note." I says, "No, I'll bring it to you anyway," you
10 know, and I'm going out the door to go home and Mr.
11 Sommerford was there. I forgot about that before. Mr.
12 Sommerford said, "Hey, you got the right to go home."

13 So I said, "I'm going, I'm going out the door," and
14 I was irritable, I'll admit I was crabby, but I was sick, and
15 I heard Ray on the phone when I was leaving the front door
16 because the desks are right by the front door, you know, and
17 Ray goes, "He don't look sick to me."

18 So then I went out and I went to the doctor. I
19 called up the next day to tell him I ain't coming in Thursday
20 or Friday, I got a note, and Mr. Marzalek was on the phone --
21 that was the clerk -- and he goes, "Well, it don't matter,
22 you got to go to the 1st District now and stay there," you
23 know, he didn't say nothing about a write-up or nothing.

24 MR. EX: Objection continuing, same grounds.

25 THE COURT: Marzalek, who does he work for?

1 THE WITNESS: He worked for the 6th District for the
2 Sewer Department. He was the clerk on the phone.

3 THE COURT: Overruled.

4 THE WITNESS: So I told him okay. And then I called
5 -- I said, "Give me the number of the 1st District" because I
6 didn't have it. So then I called Morris O'Connor, and I told
7 him, I said, "Well, I won't be in until Monday. I got a
8 doctor's note." He says, "Okay."

9 So when I went to work on Monday -- I never seen Ray
10 after that for about six months, I never seen a dock or
11 nothing like that, and when I got to the 1st District then
12 Morris said, "Did you have some trouble down there?"

13 I says, "No," you know, I says, "I was sick and Ray
14 says I wasn't sick," and I gave him my doctor's note, and
15 Morris goes, "Don't mean nothing to me," you know, he throws
16 the thing down.

17 And then this Billy, I think his name was
18 Petrocelli, was standing out there, and he goes something
19 about a dock, "Do you want to sign this?"

20 I says, "No, I didn't get that. If I got a dock,
21 they're supposed to just put it in my record with that."

22 And he goes, "The old man will get made." He says,
23 "You got to do these the right way."

24 MR. EX: Objection, same grounds.

25 THE COURT: Overruled.

1 THE WITNESS: I was standing by the desk and I says,
2 "Well, I'm not signing it. Here's my note, and that's it,"
3 you know, and he called Billy in, and he says, "Come here,
4 Billy," you know, and he says, "Scribble on this thing," you
5 know.

6 So Billy scribbles on it and he goes, "You see, we
7 don't even need you." He says, "It don't matter. This is
8 nothing." He says, "We just keep the old man happy."

9 So then I just went to work over there and I just
10 kept working. That's the first time I got to work in that
11 dock in the 1st District. So any of the other trucks or
12 anything like that was way before then, two years, it was
13 like three.

14 As a matter of fact, if they're talking about that
15 other truck, that's going back four years. There is not even
16 a write-up on it, you know, no one could even know. That was
17 when I first was really starting with them guys.

18 Those are the only two write-ups I seen.

19 THE COURT: How long have you been out of work?

20 THE WITNESS: I have been out of work four years
21 because I have been under doctor's care.

22 THE COURT: Do these documents have your pay level in
23 there?

24 THE WITNESS: I think they have on the exhibit the
25 first time. My pay level was like \$14.30 an hour. They got

2nd
write up
when he was
sick - went home

1 a couple raises, but I just know about --

2 THE COURT: How much is that a year?

3 THE WITNESS: It makes about I think 28, 29,000. It
4 depends if you --

5 THE COURT: What day did you go out of work?

6 MR. WZOREK: June 29, 1984.

7 THE COURT: Oh, yes, I remember that.

8 THE WITNESS: And then the other charge I seen what
9 they had was 7-2/3 days, okay -- and

0 MS. SMITH: Objection, there has been no evidence of
1 that charge that he is referring to now. There has been no
2 evidence whatsoever of his absenteeism.

3 THE COURT: I'm sorry, I don't understand.

4 MS. SMITH: Well, he is saying that we have charged
5 him with being absent for 7-3/4 days. There is nothing in
6 the record stating that the Department of Sewers is in fact
7 charging Mr. Wzorek with being absent 7-3/4 days. Nothing
8 has been brought out during testimony.

9 THE WITNESS: Your Honor, sir, it was in the summary
0 judgment, 7-2/3 days.

1 THE COURT: Oh, in Judge Marshall's summary
2 judgment?

3 THE WITNESS: No, Judge Decker's. He even says in
4 the summary judgment that 7-2/3 days is not 10.

5 MS. SMITH: But this is rebuttal for purposes of

*C. 29/84
L. J. 29/84*

1 testimony in this trial, your Honor. I believe the summary
2 judgment motion is irrelevant to what the defense put on in
3 this matter before the judge.

4 THE COURT: It is relevant, but it shouldn't be in
5 rebuttal, and you're correct.

6 MS. SMITH: Thank you.

7 THE WITNESS: And as far as the --

8 THE COURT: It is in evidence because it's part of
9 the record.

10 THE WITNESS: And as far as the charges -- well,
11 those are the only charges that I remember that are written
12 charges.

13 Now, as far as the other guys being here yesterday,
14 if that's relevant to the case, which there is no write-ups,
15 no nothing, I first seen those charges on -- when we were
16 sitting in here for that pretrial, you sent us for the
17 pretrial, that's the first time I seen that, so that's why I
18 objected.

19 As far as it goes about breaking a clutch or
20 anything like that, trucks break down all the time, your
21 Honor. If you drove trucks and know anything, there is no
22 way in the world that in one day you can make a truck
23 explode. There has to be a defect. It just can't be done
24 that way.

25 MR. EX: Objection, lack of foundation.

1 THE COURT: He has got as much experience in it as
2 your witness did. He can say it, I think. He drove trucks
3 for them for all those years.

4 THE WITNESS: And the only thing they point to is
5 that one. Whether it cost a dime or it cost a thousand
6 dollars or two million dollars, if something just happens by
7 just happening, it just happens. It doesn't mean that you're
8 trying to do that. No one tries to kill themselves or
9 nothing like that.

0 And as far as backing up or speeding, that was a
1 ridiculous thing for the man to say, because if a truck
2 weighs that much weight, how in the world can you speed with
3 it if that's the first day on the truck or go fast? I mean
4 fast is just a matter of speed limit. I was going under the
5 speed limit.

6 And as a matter of fact, Mr. Ercek even testified
7 that he was just asked to be a witness a week before. I
8 definitely think that would be new discovery.

9 MR. EX: Objection, relevance.

0 THE COURT: Overruled.

1 THE WITNESS: So in other words, I thought discovery
2 was ended a couple of years or a year ago because when Mr.
3 Mitchell was in here for me he asked about new discovery and
4 you said there is no new discovery.

5 MR. EX: Objection.

*Howing
by the
clerk*

1 THE COURT: Now you're arguing.

2 THE WITNESS: Sorry about that.

3 All right, now, about the other truck or 229 or
4 what, as you can see, that thing was completely dropped when
5 we were talking yesterday.

6 As a matter of fact, if you bring up two trucks
7 being down in eleven years, that's an unbelievably good
8 record, because I know of Joseph Myron, who was an excellent
9 truckdriver, the best I ever seen, and he broke down three
0 times in one day and nothing was ever said about that.

1 It just happens. The trucks are old, as you can see
2 what their witnesses were saying. Mr. /WAZ will you ski said
3 he never wrote me up, he had no trouble with me, but then all
4 of a sudden he remembered about SV-17. That seemed a little
5 funny to me, your Honor.

6 MS. SMITH: Objection, he is arguing, your Honor.

7 THE COURT: Sustained.

8 THE WITNESS: I'm sorry. As far as these other
9 charges, I think these charges are way too long in the past.

0 MS. SMITH: Objection, argument.

1 THE COURT: Sustained.

2 THE WITNESS: I don't know really what charges they
3 made on me except them three, you know, and as far as the
4 trucks, they break all the time, your Honor. These trucks
5 are constantly driven.

*Other
employees
could have
been in
2 trucks in
11 years*

1 As a matter of fact, I have even seen times where
2 laborers were let drive these trucks and they have no
3 authority to drive no trucks, and they have done it. Mr.
4 Gorski has drove trucks. Even if Mr. Krupa gets in and
5 drives a truck, that's not right. You're specified to just
6 have drivers.

7 MS. SMITH: Objection, your Honor, argument.

8 THE COURT: Sustained.

9 THE WITNESS: I'm sorry I'm doing that, but, you know
10 --

11 THE COURT: That's all right.

12 Have you got anything more?

13 THE WITNESS: Those are the only two charges I guess
14 they charged me with, but I feel like I was a good employee
15 and most of the people back me up, so--

16 THE COURT: That's argument too.

17 THE WITNESS: I guess that's it to the charges they
18 made.

19 THE COURT: Step down then.

20 Do you want to examine him?

21 MS. SMITH: No, your Honor.

22 THE COURT: Step down.

23 (Witness excused.)

24 THE COURT: Ready to take closing arguments?

25 MS. SMITH: Your Honor, we have one brief rebuttal

1 witness.

2 THE COURT: Okay, fine, bring him in, or her.

3 You did do rebuttal.

4 MS. SMITH:

5 A. Your Honor, we had him on and you said that -- we
6 were going to call him in our case in chief and then you --

7 THE COURT: Okay, fine.

8 MS. SMITH: Do you remember that scenario?

9 THE COURT: Yes. This is Young, right?

10 MS. SMITH: Right.

11 THE COURT: Come on up here, Mr. Young.

12 You were previously sworn. You understand you're
13 still under oath?

14 THE WITNESS: Yes, sir.

15 BRIAN EARL YOUNG,
16 called as a witness herein, duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. SMITH:

20 Q. For the record, Mr. Young, please state your full
21 name.

22 A. Bryan Earl Young.

23 Q. Directing your attention to June of 1984, were you
24 employed with the Department of Sewers?

25 A. Yes, I was.

1 Q. Were you involved at all with the preparation of the
2 exit interview forms?

3 A. Yes, I was.

4 Q. Let me show you what's been marked as Defendant's
5 Exhibit No. 22 and ask if you recognize this document.

6 A. Yes.

7 Q. What is that, sir?

8 A. It's a copy of an exit interview.

9 Q. And whose exit interview form is that?

10 A. Eugene Wzorek.

11 Q. And is that your signature that appears at the bottom
12 of the page?

13 A. Yes, it is.

14 Q. What title is next to your signature?

15 A. Acting chief timekeeper.

16 Q. Was that the title you actually held for payroll
17 purposes in 1984?

18 A. That's correct.

19 Q. What duties were you performing back then?

20 A. Well, I was the chief timekeeper, but --

21 Q. With respect to the other individuals terminated on
22 June 29th of 1984, did you also complete their exit interview
23 forms?

24 A. Yes, I did.

25 Q. Directing your attention, sir, to the individuals

1 terminated in late June and the individuals who became career
2 service on July 1st of 1984, are you aware of any 27th Ward
3 employees who were on probation in the first part of 1984
4 that became career service on July 1st of that year?

5 A. Yes.

6 Q. Let me show you what's been marked for identification
7 as Defendant's --

8 THE COURT: This doesn't sound like rebuttal to me.

9 MS. SMITH: Well, your Honor, it is because there has
10 been testimony by Mr. Wzorek that 27th Ward employees, half
11 of them --

12 THE COURT: That was in his opening -- that was in
13 his opening and you have had this man on as your witness
14 since then.

15 MS. SMITH: No, I haven't, your Honor. This is the
16 first I have called him as my witness. He has been called
17 by the plaintiff as his witness before, last week, but I have
18 never called him as your own.

19 THE COURT: Yes, you did. When he called him as an
20 adverse witness, you asked if you could take him out of time
21 so that he wouldn't have to come back and that you wanted to
22 ask him and one other witness questions in cross-examination
23 and be allowed to put them on as your own witnesses. There
24 was Mr. Young and one other person.

25 MS. SMITH: I believe the two individuals were Dr.

1 Pounian and Mr. Barnes, your Honor, not Mr. Young.

2 THE COURT: Well, go ahead.

3 MS. SMITH: Okay, thank you.

4 BY MS. SMITH:

5 Q. Let me hand you what's been marked for identification
6 as Defendant's Exhibit No. 21 and ask if you recognize that,
7 sir?

8 A. Yes, I do.

9 Q. What is that?

10 A. It's a list of individuals from the 27th Ward who made
11 probationary career service.

12 Q. Did you did you prepare that list?

13 A. Yes, I did.

14 Q. Do you recall why you prepared that list?

15 A. At the time I think an attorney asked me, Attorney
16 Hubert, I think it was, asked me to prepare a list of the
17 27th warders who made career service.

18 Q. Do you know if that was in preparation for a lawsuit
19 against the City?

20 A. I think it was at the time, yes.

21 Q. Do you know if Attorney Hubert was an attorney for the
22 City of Chicago?

23 A. I think he was. I was introduced to him as being
24 attorney for the City of Chicago, yes.

25 Q. And you personally compiled that list?

A. Yes.

Q. Sir, how many probationary employees in the 27th Ward became career service in July of 1984?

A. Around 71.

Q. I'm sorry, 71?

A. 71, I think it was.

MS. SMITH: I have no further questions, Judge.

THE COURT: Do you have any questions?

MR. WZOREK: Yes.

CROSS EXAMINATION

BY MR. WZOREK:

Q. About the exit interviews, you got a copy of mine, do you not?

A. Yes.

Q. There is a whole bunch of lists on top that you're supposed to check off what the person has done, is that not right, when you're giving him the exit interview?

A. We were not told that. The exit interview is only status of your vacation that you acquired within that year. Actually, we were told it's just a pink slip.

Q. But according to the rules you were supposed to give these to the person directly, were you not?

A. No.

MR. EX: Objection, lack of foundation as to what rules he is pointing to.

*71
people from
27th ward
made
career service
in 1984*

1 THE COURT: Overruled. He know what he is talking
2 about.

3 BY MR. WZOREK:

4 Q. The exit interview rules, they were supposed to be
5 given by a district supervisor, not you?

6 A. No.

7 Q. Have you ever seen a rule where it changed those
8 rules?

9 A. There were memoranda stating that, you know, a foreman
10 was supposed to do it. There has never been an exit
11 interview given that it wasn't handled in our department
12 through downtown.

13 Q. I beg to differ with you, because Mr. Lucille in 1983
14 had to give exit interviews to the employees that were there
15 and that rule has never been changed.

16 A. That's not to my knowing, sir.

17 Q. Well, then you can't say it wasn't, am I right?

18 A. In my 22 years working for the City at the Department
19 of Sewers, all exit interviews were handled through the
20 downtown office.

21 Q. Did you give all these exit interviews personally with
22 all the men there?

23 A. No. I prepared all of these exit interviews.

24 Q. Aren't you supposed to give them to the man directly?

25 A. It's not mandatory that an individual sign an exit

1 interview.

2 Q. Well, if you would notice on the rules it states
3 you're supposed to give them. If they don't sign, then
4 they're supposed to sign a C-9, is that not right?

5 A. No.

6 Q. Well, if the rules state that, then you are wrong in
7 giving these, is it not?

8 MS. SMITH: Objection, he is arguing with him, your
9 Honor.

10 MR. WZOREK: Well, I'm asking him a question, is he
11 right or is he wrong.

12 THE COURT: Read the question to me, please.

13 (Record read.)

14 THE COURT: Answer.

15 THE WITNESS: Can you repeat that again.

16 MR. WZOREK: Okay.

17 BY MR. WZOREK:

18 Q. If the rules state that the exit interview is supposed
19 to be given in person, okay, those are the rules now, then if
20 you didn't do it that way, you are wrong.

21 MS. SMITH: Your Honor, I'm going to object. I think
22 Mr. Young has already answered that there are no rules that
23 mandate an exit interview.

24 THE COURT: This is a cross-examination by a
25 non-lawyer and I'm going to give him some leeway.

1 Go ahead and answer the question, Mr. Young.

2 BY THE WITNESS:

3 A. I think I can only say that the rules that you're
4 stating to are departmental rules, and the rules that I was
5 governed under under this were 11th floor rules.

6 THE COURT: Have you got a copy of those rules?

7 MR. WZOREK: They were put in evidence before, the
8 exit interviews.

9 THE COURT: No, his rules. Have you got a copy of
10 your rules?

11 THE WITNESS: No, I'm sorry, I don't.

12 THE COURT: Were they ever printed anyplace?

13 THE WITNESS: Yes, they are.

14 THE COURT: Did you ever get them?

15 MR. WZOREK: No, there's never been no -- I never
16 seen those rules.

17 THE COURT: Are there such rules?

18 MS. SMITH: No, I believe Dr. Pounian testified there
19 were no such rules regarding exit interviews.

20 THE COURT: But he says there are such rules.

21 MS. SMITH: He could be mistaken, your Honor.

22 THE COURT: So could Dr. Pounian.

23 MS. SMITH: Pardon?

24 THE COURT: So could Dr. Pounian, I take it.

25 MS. SMITH: Well, I think Dr. Pounian is much more

1 familiar with the personnel rules since he wrote them.

2 THE COURT: Than the guy who carried them out?

3 MS. SMITH: I would think so, your Honor.

4 THE COURT: Continue.

5 BY MR. WZOREK:

6 Q. Now, on this card, what I'm telling you, an exit
7 interview, it would not be stated all these things if they
8 weren't to be used to tell a man why he is terminated, is
9 that not right?

10 A. Right.

11 Q. Then you didn't tell Eugene Wzorek why he was
12 terminated at his exit interview?

13 A. No, I haven't.

14 Q. So that means at the last document that I was possibly
15 getting, no one knew what I did?

16 MS. SMITH: Objection, your Honor.

17 THE COURT: Is that a question?

18 MR. WZOREK: Yes, I'm asking him if anybody knew wha
19 I did.

20 THE COURT: Answer the question.

21 BY THE WITNESS:

22 A. Not to my knowing.

23 BY MR. WZOREK:

24 Q. Another thing I would like to ask you on this, where
25 it says five days vacation, okay?

*Exit interview
does not reflect
what Eugene said
regarding his termination*

1 A. Yes.

2 Q. That's what I got coming, right?

3 A. At that time, yes.

4 Q. Was I supposed to receive that pay?

5 A. My understanding, yes.

6 Q. Well, to the best of your knowledge, did I get that?

7 A. I wouldn't know.

8 Q. Then in other words, with all the things that you're
9 stating now by being a laborer, being paid as a laborer and
10 just being acting, you really don't know the whole procedure
11 for the exit interview, is that not true?

12 MS. SMITH: Objection, your Honor.

13 THE COURT: Overruled. You may answer.

14 THE COURT: Say it again.

15 BY MR. WZOREK:

16 Q. You do not know all the procedures, then, you did not
17 fill this out, sir, you did not know if I got my money, you
18 did not know why I was fired, then in other words, you
19 shouldn't have been in the position of giving these if you
20 didn't know nothing, am I right?

21 A. That was within my job title as acting chief
22 timekeeper.

23 Q. I just asked you if within your knowledge that you
24 knew all this.

25 MS. SMITH: He is arguing with the witness, your

1 Honor.

2 THE COURT: That's argument.

3 BY MR. WZOREK:

4 Q. So in other words, the last question is you did not
5 know why I was fired?

6 A. No.

7 Q. You did not tell me?

8 A. I didn't know.

9 MR. WZOREK: Okay, your Honor, that's enough.

10 THE COURT: Anything further?

11 MS. SMITH: One question, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. SMITH:

14 Q. Mr. Young, with respect to your title as acting
15 timekeeper, prior to June of 1984, how long had you been
16 performing the duties of a timekeeper?

17 A. Nineteen years or more.

18 MS. SMITH: Thank you.

19 Nothing further of Mr. Young.

20 RECROSS EXAMINATION

21 BY MR. WZOREK:

22 Q. Does performing the duties of acting timekeeper for
23 nineteen years make you do your job, right or --

24 MS. SMITH: Objection, your Honor, that's
25 argumentative.

1 MR. WZOREK: I'm just asking him.

2 THE COURT: Sustained.

3 BY THE WITNESS:

4 A. I think it does.

5 MS. SMITH: Your Honor, there is no question pending.

6 THE COURT: Is that it?

7 MR. WZOREK: That will be it, your Honor, I proved my
8 point.

9 THE COURT: You may step down, sir, and thank you
10 very much.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: Any further testimony?

14 MR. EX: No, your Honor.

15 THE COURT: So the City rests in rebuttal and you
16 don't have any further testimony?

17 MR. WZOREK: No, I have no witnesses.

18 THE COURT: You may argue.

19 MR. WZOREK: Can I read it off this, your Honor?

20 THE COURT: You can do it any way you want.

21 MR. WZOREK: Do I sit down there or what?

22 THE COURT: No. You can use the lectern if you
23 want, stand if you want, you can sit at your table if you
24 want.

25 MR. WZOREK: No, I'll just stand up.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. WZOREK: Your Honor, I first want to apologize to the Court for any problems I have caused, and if I did not seem respectful to you, sir, it's because I was nervous and I'm not a lawyer.

I greatly appreciate the opportunity you have given plea to have my day in court. Thank you very much.

Your Honor, I think the evidence and the testimony of the witnesses has shown that the charges were just a pretext by the City to hide the real reason for my firing: politics.

And even after the firing of supposed poor performance they still were fishing for charges up to pretrial.

As for the witnesses, John Lucille, his testimony was consistent, he told of total politics, and he gave me a rating of 85, and it is up to the City of Chicago to show I did not have an 85 because they were in charge of the rating cards and the rating slips.

As for Ron Gorski, he told of me being politically threatened. He wasn't fired, he had nothing to gain by being here, and his testimony, even if it wasn't said in the right words or fine words because he is just a worker, he at least told it constant, you know, consistent with mine.

As for me, I told the truth and my testimony was

①
Cam Lucille
Wm a
Hobbs 85
B
Gorski

1 consistent with my witnesses, and the only reason that I have
2 been here this long is because I had a decent case and I was
3 telling the truth.

4 As far as the hostile witnesses, Mr. Madia, Mr.
5 Madia is an older man and could hardly remember anything he
6 was saying. He sold tickets -- and this is no lie or
7 nothing like that -- and he sold these tickets whether they
8 were raffle, political, Jane Byrne, or Ed Burke, through the
9 power of his office, and he even testified that I was a good
0 worker and had high ratings and didn't break no trucks down,
1 no write-ups.

2 He did threaten me, your Honor, but like I said, he
3 was an older man, and I was not going to press him.

4 As far as Sommerford, he said he didn't fire me. He
5 said I was a good worker. He said as far as he knew I didn't
6 do anything wrong. He never even worked with me, but he
7 still wrote me up for poor performance.

8 Mr. Sommerford did threaten me, and I had a witness
9 to that part. But like I said, the man was old. You could
0 see on the stand what was happening, and I wasn't going to
1 press an old man like that.

2 As far as Eugene Barnes, the key statement Eugene
3 Barnes made on the stand when he was being questioned before
4 the breakoff was, he said, "I did not fire you, Sommerford
5 did."

*he
gave him
poor performance
but didn't discharge
him*

1 You can't change that statement. Once you make that
2 statement that's what you're saying. He didn't know what I
3 done for poor performance, he didn't know what charges I had,
4 he didn't know anything about that.

5 He never mentioned any trucks. He never mentioned
6 anything about breaking down trucks or clutches or anything.

7 As far as on the siting sheets or on the work things
8 sent up to Mr. Pounian, it just said "poor performance."
9 There was room for anything I could have done, but as you can
10 see, your Honor, in all that evidence there was nothing
11 written down.

12 Barnes was the Commissioner when I was fired. Any
13 other reference to trucks or anything, the only mention was
14 Quigley. They have not put together that the trucks or
15 anything consisted of anything of me being fired. They have
16 not done this. They have not hooked it up.

17 As far as Pounian, in my deposition he never
18 mentions May the 3rd. You would think that a man such as Dr.
19 Pounian, like they say he is so highly educated, why didn't
20 he mention May the 3rd or the change in the rules in my
21 deposition, your Honor?

22 As a matter of fact, he started testifying that
23 there were no numbers, no numbers in the ratings that we got
24 in '84. That was contradicted by Lucille and Madia both,
25 that there were numbers.

1 So in other words, Mr. Pounian did not know what was
2 going on in the Sewer Department. He don't know if his rules
3 were carried out. That's up to the Sewer Department.

4 Mr. Barnes testified that he didn't know what was
5 going on, it was up to his supervisors. If his supervisors
6 don't apply these rules then they weren't in process, that
7 was their fault, not the men, not mine.

8 Now you have Bernard Young. He states now he didn't
9 even know how he was giving exit interviews. He didn't know
10 if he checked the rules if they were right or they were
11 wrong, he was just doing it for nineteen years.

12 Doing it for nineteen years don't make it right,
13 your Honor. He has been making mistakes for nineteen years.

14 Now we come to Mr. Wasilewski. He said he never
15 wrote me up. He had said he had no trouble with me, no
16 negligence, no nothing. He couldn't remember 1984, so how
17 could he remember 1981 and '80?

18 He said I didn't break down no trucks, then he talks
19 about a Vactor, after he is being cross examined.

20 Now we come to Mr. Wiatr. He totally contradicted
21 Mr. Wasilewski. He said he went out there to fix a broken
22 starter and accused me of breaking the starter when it was
23 broke already.

24 Then we have Joe Freeck, the laborer that comes in.
25 If this is relevant to the case -- I think it's not, but if

1 it is, I'll, you know, give my testimony.

2 The main thing he says that he was asked to be a
3 witness a week ago. A week ago, your Honor?

4 He is no mechanic. Plus to me that was new
5 discovery. It was an irrelevant charge. There is no
6 write-up on this truck. No one produced a bill saying how
7 much it cost. It's just hearsay to that.

8 If a truck breaks it doesn't mean anybody is
9 negligent or sabotage. Anything could happen. Sabotage is
10 one of the hardest things in the world to ever prove. Who
11 knows what is in someone's mind?

12 Another thing, how could you be driving fast on city
13 streets with a truck over five tons or whatever they said it
14 was. It's impossible. I wouldn't do it, I would be scared.

15 And a witness coming in just seven days ahead of
16 time, my God, your Honor, I mean, I can't see that.

17 Now you have Krupa. He thinks he wrote me up.
18 Where is the write-up? They had helmet and dock write-ups.

19 Where is this write-up for a charge that's really
20 worse if I did do these things?

21 He states that they paid, the company paid. If I
22 would have done this, there is no company in the world that's
23 going to pay for any of this, and they had a 50/50 warranty.
24 He doesn't bring up Pasdale, who took a broken part to the
25 company and showed it was a defect part. He doesn't bring

*no
write up
at all*

1 that engineer up. He just brings up what they want brought
2 up.

3 If Quigley was so mad that he was making all these
4 calls, you mean no one is going to write me up, no one is
5 going to give me at least a day off, no one is going to fire
6 me? It makes no sense to this part.

7 They keep talking about Quigley, Quigley, Quigley.
8 Barnes is the Commissioner when I'm fired. They're not
9 hooking Barnes up with this, they're hooking up Quigley. He
10 has been gone.

11 And as far as Dudzinski, he can't remember
12 situations either. I don't blame him, it's a long time, and
13 they've got business, but I remember these situations because
14 I lived them, I lived them for four years and what happened.

15 He told you, your Honor, in here that he never heard
16 of a man being fired for a helmet, let alone being fired
17 three years later for a helmet. As a matter of fact, these
18 are all unreasonable, these charges.

19 And the dock, if a man is sick, Mr. Dudzinski said
20 on the stand, he says if a man is sick he has got the right
21 to go home. The problem is is who got rid of the doctor's
22 note. I produced it to Morris O'Connor and it was supposed
23 to be put in my file, only it was not there no more.

24 This should have never went on this far. When
25 you're sick you're entitled to go home. Any employee

*Dudzinski
never fired
Quigley
helmet*

*When
Sick
entitled to
go home*

1 anywhere is entitled to go home, and if he brings a doctor's
2 note I'm saying it's okay. And there is no doctor in the
3 world going to give you a note and give you medication if
4 you're not sick.

5 As far the charges, the helmet, 1981, that was
6 really too long ago. I was punished for that. The written
7 reprimand is the punishment for that helmet if I did it or
8 if-- you can't punish me twice for that charge. It makes no
9 sense.

*consider
reprimand*

10 The dock, I had doctors' notes. I don't think I
11 should even have to answer that by having a doctor's note.
12 He said on the stand it was -- you know, he couldn't argue
13 with a doctor. It was just his opinion to Monico that I
14 wasn't sick.

15 I happen to have a bad habit of smiling, but it's a
16 nervous reaction. That don't mean I'm laughing. It's just
17 being nervous. They're not doctors. They don't know what's
18 going on. And they did charge me with 7-2/3 days. That was
19 the original charge in the summary judgment and Judge Decker
20 even stated that these charges were not enough to give them
21 summary judgment.

22 My first attorney did not put the doctor's note in.
23 That's why he is not here today, your Honor, with another
24 bunch of things he has done. And the rule says ten days. If
25 it's nine days, nine and a half, 7, six, it's still not ten.

1 These charges aren't reasonable and the length of
2 time is' also unreasonable. Anyplace you work for would
3 never wait two and three years to fire you. You mean if they
4 had a man on their staff that was no good, was a lousy
5 driver, they're going to pay him an extra two and three
6 years, keeping him on here, taking taxpayers' money? I don't
7 think so, your Honor. I can't see it.

8 I worked for eleven years with the City, and you
9 mean to tell me that just 24 hours before I become career
10 service they fire me? That's ridiculous, because if they
11 would have fired me one day later if they brought me before a
12 board, these charges would not stick. It's totally
13 politics.

14 About the SV-17 if I have to defend that case, like
15 I said, your Honor, I was never charged or written up for
16 that thing if it was as serious as they made it out to be,
17 and I think it's new discovery and I think it's irrelevant.

18 Your Honor, I didn't do it. I was at the truck, I
19 drove the truck, and I almost got the thing blown up in my
20 face. There is no way I would do that, your Honor, and that
21 was my first day on the truck, and there is no way you can
22 break a clutch in one day. If you know anything about cars
23 and stuff, the clutch just goes down, you lose the power in
24 the clutch.

25 To explode, to explode, he said it was a one in a

10
day
direct
2nd 3rd day

from
day
before the
vacation comes
service

your
quote

million thing. Accidents are a one in a million thing.

229, I don't think I even have to answer that, because we don't know nothing about 229 or what Ray was talking about driving or coming in or being towed in. That was never brought up. That one was never even brought up until court that I heard that one. These charges and the witnesses are all new.

In conclusion, your Honor, the original charges are irrelevant and a pretext to hide the real reason for my firing, my thousand dollars to Daley, the wrong party, and my loss of political protection, and the truck charges are unreasonable and how can they be used at this late date?

*Given
11000 to
Daley
party -
loss of political protection*

These charges show how weak the City's case is. They were fishing and they're still fishing. If these charges are unreasonable, then the only other conclusion is politics, plain and simple.

Your Honor, all charges are so long ago it's unreasonable to be fired this late.

Your Honor, the evidence has proved the City was wrong in firing, and their explanations are a pretext, and it was because of known political affiliations with Daley that I was fired and giving the thousand dollars.

*Known
political affiliations
w/ Daley
he was a fraudster*

I was told, your Honor, like I said before, that giving a thousand dollars from a truckdriver is totally out. You ain't supposed to. Quigley gave a thousand

1 dollars, your Honor. I don't know what he got on the side or
2 what that is, but the total thing was a thousand dollars.
3 They said, "No way are we going to let a truckdriver give a
4 thousand dollars to Richie Daley," and that was Sommerford.

5 So, your Honor, if you find for me that I'm right
6 and I'm telling the truth, which I definitely think I am --
7 and it's up to you, your Honor -- I definitely should be
8 awarded my full reinstatement with back pay, attorney's fees,
9 and doctors' expenses because it was created by the City.

10 THE COURT: Did you put in doctors' bills in the
11 record?

12 MR. WZOREK: Your Honor, I put some doctor's -- yes,
13 they're in my pretrial, Mitchell put them in, sir.

14 THE COURT: Okay.

15 MR. WZOREK: But, your Honor, the first attorney was
16 supposed to do that. He was told by Judge Decker to go a
17 different way and do it. He wouldn't do it, your Honor.

18 THE COURT: You put them in your pretrial order?

19 MR. WZOREK: Mitchell has got a list or something
20 like that. The bills are out here too, but he had the list
21 of what the doctor bills were.

22 THE COURT: Where is the bills?

23 MR. WZOREK: Your Honor, I don't think I should be
24 fired.

25 THE COURT: Did you show the bills to the City?

1 MR. EX: No, your Honor.

2 MR. WZOREK: No your Honor, because I didn't get them
3 from Mitchell until, you know --

4 THE COURT: If you're going to have them part of the
5 case, you have got to put them in.

6 MR. WZOREK: See, I didn't know that because he told
7 me that Judge Decker says, "No, we don't want to hear about
8 your doctors or anything." That's what Harry Schroeder first
9 told me.

10 THE COURT: How much do they total?

11 MR. WZOREK: The total things that I gave to Harry
12 Schroeder and I didn't get these back were like \$9,000 for
13 psychiatric treatment and for colitis treatment.

14 THE COURT: Counsel, I'm either going to let him
15 reopen to deal with his doctor bills, or I'll take the -- if
16 I rule for him, I'll take the damages at a later date. Your
17 choice.

18 MR. EX: Well, the only thing I was going to bring up
19 in our rebuttal to his argument was the fact that Judge
20 Decker already ruled on a motion to strike all allegations
21 concerning his medical.

22 THE COURT: He ruled?

23 MR. EX: Yes.

24 THE COURT: What did he say?

25 MS. SMITH: He said that any and all allegations

1 referring to psychological and physical damages arising out
2 of this lawsuit were stricken.

3 MR. EX: That order was entered on June 19, 1986
4 while Mr. Wzorek was represented by an attorney.

5 THE COURT: Was that before the second amended
6 petition?

7 MS. SMITH: That was with reference to the second
8 amended petition, your Honor.

9 THE COURT: All right. Then the medical bills have
10 already been stricken by Judge Decker?

11 MR. WZOREK: See, what I was told by Harry Schroeder
12 that he wouldn't keep it. I'm just asking you, your Honor,
13 because --

14 THE COURT: Judge Decker already ruled on that and
15 I'm not going to change it.

16 MR. WZOREK: All I'm saying -- no, I'm not asking you
17 to change it. He was just saying he told Harry Schroeder to
18 go a different way.

19 THE COURT: What does that mean, a different way?

20 MR. WZOREK: Amend something, and Schroeder didn't do
21 it.

22 THE COURT: What did he tell him to do?

23 MS. SMITH: It was simply -- I can hand the Court the
24 order right here.

25 MR. WZOREK: Yes, I don't understand.

1 THE COURT: Just tell me, Ms. Smith, please.

2 MS. SMITH: They were stricken. He didn't mention
3 anything about leave to amend, your Honor.

4 THE COURT: He didn't mention to go another way?

5 MS. SMITH: That's correct. "Motion of respondents
6 to strike portions of petitioner's second amended petition
7 for rule to show cause granted. Time to respond and to
8 answer remaining allegations extended to July 7th."

9 MR. WZOREK: That's all right. I just didn't know.
10 He just told me that.

11 THE COURT: All right.

12 MR. WZOREK: I'm just stating what he told me because

13 --

14 THE COURT: Go ahead.

15 MR. WZOREK: But as far as it goes, I think I should
16 get my back pay, full reinstatement, and lawyer's fees, your
17 Honor, at least, or what to do in a Shakman case.

18 THE COURT: Okay.

19 Response.

20 CLOSING ARGUMENT ON BEHALF OF DEFENDANT

21 MR. EX: Your Honor, in a Shakman case of this type
22 the only issue is whether or not the decisionmaker who has
23 the authority to fire, who in this case was Eugene Barnes at
24 the time Mr. Wzorek was terminated, the question is whether
25 Mr. Barnes, that decisionmaker who had the decision to hire

1 and fire, was he politically motivated in making his
2 discharge decision. That is the essence of this lawsuit.

3 No other factors outside of that particular question
4 are relevant.

5 THE COURT: What would you say, Mr. Barnes' motive
6 was from the testimony?

7 MR. EX: Well, what I believe his motive was? I
8 believe his motive was to improve the quality of the workers
9 in his department.

10 THE COURT: He didn't say that.

11 MR. EX: Your Honor, I believe that that was part of
12 his testimony.

13 THE COURT: I don't remember him saying that. He
14 did say he wanted to have a good department and he wanted to
15 get rid of the deadwood or words to that effect. Anyway, go
16 ahead.

17 But he didn't say that was as respects this
18 particular person.

19 MR. EX: Oh, as to this particular person, your Honor

20 --

21 THE COURT: Yes.

22 MR. EX: I misconstrued your question. I thought you
23 were asking what was his motivation in discharging
24 probationary career service employees.

25 THE COURT: No, just the plaintiff.

SEND
JAS NOT
Deadwood
why on
85

1 MR. EX: His motivation in this particular situation
2 was that he had to rely on other reports coming up through
3 the chain of command to him.

4 THE COURT: But he would adopt whatever their
5 purposes were.

6 MR. EX: Well, I disagree that he testified he would
7 adopt their purposes. He had to rely on whatever reports --

8 THE COURT: Their reasons were his reasons.

9 MR. EX: No, your Honor, I don't believe that any
10 other reasons other than the criteria that he set forth to
11 his subordinates to evaluate had any relevance or connections
12 to the motivation of the Commissioner.

13 THE COURT: And if they didn't follow his criteria?

14 MR. EX: If they did not follow his criteria, your
15 Honor, the only thing that could happen is that he would not
16 be aware of it. He relied on what he thought were his
17 subordinates following his criteria.

18 When he gets these particular pieces of information
19 back, he is relying that they're true and accurate.

20 THE COURT: So he sits up there completely immune
21 with no responsibility for anything that his people do?

22 MR. EX: Well, your Honor, what his people do, he
23 runs the department. He cannot obviously be looking over the
24 shoulder of all of his people each and every day. He does
25 delegate the responsibility to implement his policies and

1 whether or not mistakes are made or unwise choices --

2 THE COURT: So you're saying that Judge Bua really
3 meant that if somebody at the City is screened from knowing
4 the reasons that people are fired, then they're immune from
5 the Shakman decision, is that right? If they don't know
6 what's going on down underneath them, they're not responsible
7 for it, is that what you're saying?

8 MR. EX: What I'm saying, your Honor, is that in this
9 particular situation I don't think that Shakman holds that
10 it's a respondeat superior, that if somebody is doing
11 something down below and unless you can show that the
12 decisionmaker who is setting the policy for the particular
13 department is knowingly and intentionally --

14 THE COURT: So no matter what's going on down in the
15 department, no matter how bad it gets, if the head of the
16 department or the cabinet official can be adequately screened
17 from the specific knowledge of what's happening, he is not
18 responsible, is that it?

19 MR. EX: Not unless there can be some showing that he
20 knowingly acquiesced his decisionmaking power to the people
21 below him, and I don't think there has ever been any
22 testimony to that effect, your Honor.

23 THE COURT: All right.

24 MR. EX: Your Honor, I believe the evidence has shown
25 that Mr. Wzorek was a probationary career service employee

1 who had prior to being designated a probationary career
2 service employee was what was called a DES employee, and
3 under Section 25.1-3(5) of the City of Chicago Municipal Code
4 a DES is what is referred to as a departmental employment
5 service employee, and a DES employee is in fact an employee
6 at-will, who under the Code had no career service
7 protections.

8 THE COURT: What about under the Shakman doctrine,
9 did he have any protection there?

10 MR. EX: Your Honor, not only under the Shakman
11 doctrine, but under the United States Constitution no one is
12 allowed to be fired for certain inappropriate reasons, and in
13 this case political reasons. That is what the Shakman case
14 is about, and the consent decree, I believe, your Honor, was
15 a result of what was found to be at one time a practice of --
16 or to prevent any further practice of politically motivated
17 employment decisions.

18 THE COURT: Okay.

19 MR. EX: Now, whether or not you work for the City or
20 you work for a private employer, that goes without saying.
21 Your constitutional rights cannot be violated, and that's
22 what this case is about: Did Eugene Barnes as the exclusive
23 decisionmaker with the authority to fire probationary career
24 service employees, did he allow political motivation in his
25 decision?

1 Now, as I was indicating, he was a DES employee for
2 a number of years. In 1983 it was the City Council that made
3 a decision that they were going to pass a 1984 appropriation
4 ordinance.

5 THE COURT: Wait a minute, you're putting this in
6 evidence?

7 MR. EX: That is part of the evidence, your Honor.
8 That was admitted as one of our exhibits and I think Dr.
9 Pounian made some testimony as to that.

10 THE COURT: Yes.

11 MR. EX: Now, the ordinance created a special six
12 month probationary career service period for City
13 employees. This was not the usual or the ordinary career,
14 probationary career service system.

15 THE COURT: It sure wasn't.

16 MR. EX: No, your Honor, it was something that the
17 City Council made its own determination. It wasn't the Sewer
18 Department that made this decision, it was the City Council
19 that made the decision that they wanted to citywide give all
20 existing DES employees a chance to go through a shortened six
21 month probationary period in order to attempt to allow them
22 to make career service status, and under the Municipal Code
23 there are certain protections afforded to career service
24 employees that are not afforded to probationary employees or
25 DES employees. In other words, anybody other than career

1 service employees don't have those, for instance, due process
2 protections and hearing rights at an administrative level.

3 THE COURT: What was the situation before they passed
4 this ordinance?

5 MR. EX: Before they passed the ordinance, your
6 Honor, he was what I referred to as a departmental employment
7 services employee, which basically is almost like an
8 appointed employee that has no career service protections at
9 all.

10 THE COURT: He was a patronage worker.

11 MR. EX: Essentially, historically I believe that
12 that's what you would classify many of these DES employees.

13 THE COURT: With no protection.

14 MR. EX: That's right, your Honor.

15 THE COURT: What year was the Shakman decision
16 entered into?

17 MR. EX: Excuse me?

18 THE COURT: What year was Judge Bua's decision
19 rendered?

20 MR. EX: I believe the original Shakman decree came
21 in in 1972, that first set forth --

22 THE COURT: So he was covered?

23 MR. EX: Yes, your Honor, he was covered by the
24 Shakman decree at the time that he was employed, as well as,
25 of course, the underlying constitutional provision which, you

1 know, allowed for the Shakman decree to come about.

2 There is no dispute here that Mr. Wzorek is covered
3 by those protections. What we feel the essence of this case,
4 as I indicated, your Honor, is whether or not those political
5 motivations on behalf of Eugene Barnes were a factor or at
6 play here.

7 As part of the probationary career service scheme
8 developed by the personnel rules and by the ordinance that a
9 successful completion of the six month period was necessary
10 in order to get those career service protections, up until
11 the successful completion Mr. Wzorek, like all departmental
12 employment service or probationary career service employees,
13 had no protections. They were employees-at-will and as such
14 could be discharged for any reason, of course, excluding the
15 reasons we have already talked about such as politics or race
16 or sex, things that clearly the Constitution would not allow
17 you to fire or discharge for.

18 But as employees-at-will, which I think it's beyond
19 dispute probationary career service employees such as Mr.
20 Wzorek were, the issue of whether or not there was just cause
21 to discharge is irrelevant. The law does not require just
22 cause, unlike that requirement for career service
23 employees.

24 The only requirements to discharge probationary
25 career service employees like Mr. Wzorek was under the 1984

1 appropriation ordinance, I believe Section 6 of that
2 ordinance and Rule 9, section 3 of the personnel rules, all
3 of which are part of our exhibits, your Honor, in evidence --

4 THE COURT: Why are you talking about all this
5 stuff? You say yourself the whole question is whether he was
6 fired for political motives. They didn't have a right to
7 fire him for political motives, and if they did, you lose and
8 if they didn't, you win, right?

9 MR. EX: That's correct, your Honor.

10 THE COURT: Then why are we going into all this
11 other stuff?

12 MR. EX: Well, just trying to point out what the
13 procedural requirements were to notify a particular employee
14 that he had lost his job, and what I'm pointing out is under
15 those sections that the City was required to notify him in
16 writing that he was discharged and that the department head
17 of the department discharging the employee had to issue a
18 report and notify the Commissioner of Personnel in writing of
19 that decision to discharge, and all of those particular
20 requirements were met by the City in this case, which I
21 believe Defendant's Exhibits 11 and 9 indicated that we put
22 in evidence showing that there was a probationary career
23 service form that was signed by Mr. Barnes notifying the
24 Commissioner of Personnel and in fact, Dr. Pounian's office
25 sent out a letter notifying Mr. Wzorek of his discharge.

1 So just the very minimal threshold procedural
2 requirements were in fact met, but in fact, under the law
3 you're right, your Honor, the issue is that he was, could be
4 fired or discharged for any reason.

5 Now, the memos that Mr. Wzorek keeps concentrating
6 on that Dr. Pounian issued and there was some testimony
7 about, none of those memos that were issued by the
8 Commissioner or Dr. Pounian at that time during the
9 probationary period in 1984 had any sort of binding or
10 mandatory effect on department heads or in any way altered
11 the fact that probationary career service employees were
12 employees-at-will.

13 The seminal question again focuses back on whether
14 or not he was discharged for political reasons, and as you're
15 aware, your Honor, under the Shakman decree, like any other
16 contempt proceeding, the petitioner has a rather rigorous
17 burden of proof of clear and convincing evidence, clear and
18 convincing evidence of political motivation. It's not just
19 merely whether it's more likely, but I don't believe that
20 there has been any testimony here that could show clearly and
21 convincingly that it was political reasons in the mind of
22 Eugene Barnes that were responsible for the firing of this
23 particular employee.

24 I believe that the law shows that the burden of what
25 Mr. Wzorek has to establish is that the political reasons

1 that allegedly were the cause of his particular discharge had
2 to be the substantial or motivating factor in his discharge,
3 and not only that they were the motivating and substantial
4 reason, he must also show that but for his politics he never
5 would have been discharged.

6 I believe that the law sets a very, very rigorous
7 standard there that but for his politics he wouldn't have
8 been fired.

9 THE COURT: What case says that?

10 MR. EX: Well, if I may have a moment -- it was a
11 Supreme Court decision, your Honor, Mount Healthy v. Doyle.
12 These are all recited in our motions for directed verdict and
13 our trial brief, Mount Healthy, and there have been some
14 cases, a Seventh Circuit case, Hermes at 742 F.2d at 353, and
15 I believe your Honor in a Landrum decision also cited that
16 line of cases at one point utilizing that "but for" standard
17 that was utilized in the First Amendment arena.

18 THE COURT: That was on a summary judgment, wasn't
19 it?

20 MR. EX: I believe so, your Honor.

21 THE COURT: It was a minute order, wasn't it?

22 MR. EX: I believe that that was a minute order, your
23 Honor. I think that it is attached. A copy of that decision
24 we provided for your consideration on our brief.

25 Considering those applicable standards, your Honor,

1 the City believes that plaintiff has failed to meet his
2 burden of proof that there was convincing evidence that could
3 show that Eugene Barnes was in any way politically motivated
4 in his discharge decision.

5 I think the evidence was clear that he never
6 abdicated his right or authority to fire. Only he had that
7 right.

8 I believe that the evidence during the course of
9 this trial, your Honor, also showed that Mr. Wzorek admitted
10 that he in fact voted for Harold Washington in the 1983
11 general election. There was also evidence showing that he
12 made contributions to Harold Washington.

13 All the evidence that Mr. Wzorek was pointing to
14 concerning his political affiliations, how he made a
15 particular contribution to Richard M. Daley, I believe is
16 insufficient to show political motivation or political
17 discrimination on the part of Mr. Barnes.

18 I believe that the thousand dollars donation that he
19 was talking about, first of all, occurred even before Harold
20 Washington was elected, that the alleged remarks that Mr.
21 Sommerford made, he wasn't even in a Assistant Commissioner
22 or superintendent -- excuse me, superintendent position until
23 after Harold Washington was elected and Eugene Barnes was
24 appointed.

25 He was just barely a level above Mr. Wzorek at the

1 time that he allegedly made any comments. How that 1982
2 contribution made by an Assistant Foreman could have any
3 connection two years later to Eugene Barnes' motivation, your
4 Honor, I just don't believe that he has established any sort
5 of connection other than mere speculation, which I don't
6 believe would come or approach the burden of proof he has to
7 establish.

8 Mr. Barnes, I believe, testified that he had
9 absolutely no knowledge of Mr. Wzorek's political
10 affiliations, his contributions, his political ties or even
11 his voting record. There is absolutely no evidence showing
12 that Eugene Barnes even knew Mr. Wzorek's address, and I
13 think that the record is unrefuted that no one ever imparted
14 any of this information to Mr. Barnes.

15 In short, I don't believe that there is any evidence
16 to show Mr. Barnes' decision related in any way to the
17 petitioner's politics. In fact, I believe the testimony
18 showed that Eugene Barnes and also the Mayor at the time,
19 Harold Washington, had a stated policy against political
20 harassment or even allowing politics to influence any
21 employment decision.

22 At all times, your Honor, I believe the testimony
23 clearly showed that Eugene Barnes believed that any
24 information that he relied upon or was provided to him
25 concerning all probationary career employees, not just Mr.

1 Wzorek, but all probationary career service employees in the
2 Sewer Department were true and correct.

3 I also believe that the testimony showed, your
4 Honor, that the discharge decisions are not merely limited to
5 considering work performance during the probationary period
6 itself, in fact, if you go back in time or that considering
7 or that it was necessary only to consider written
8 disciplinary documentation.

9 Your Honor, part of the uncontested facts that were
10 part of the pretrial order, I believe that those particular
11 statistics show that in 1984 after the probationary career
12 service period ended, there was 57 Sewer Department employees
13 were terminated, 57. 735 probationary career service
14 employees successfully made career service.

15 Your Honor, I believe that comes out to be
16 approximately seven percent of all probationary career
17 service employees.

18 THE COURT: That's not in evidence, is it?

19 MR. EX: Your Honor, that was part of the uncontested
20 issues --

21 THE COURT: Okay.

22 MR. EX: -- of fact that were admitted earlier by
23 you.

24 THE COURT: And you will have a chance to look at all
25 those figures, your Honor. I just wanted to make those

1 points to you in argument.

2 Also contained in those undisputed facts, your
3 Honor, was that citywide there were 7,739 City employees put
4 on that probationary career service status under that special
5 1984 appropriation ordinance. Out of over seven thousand,
6 almost eight thousand City employees, only 287 citywide were
7 discharged.

8 Your Honor, I think those statistics alone show that
9 if there was any gross motivation based on politics, those
10 numbers clearly would have been stilted far more towards
11 discharge.

12 And even more specifically in this case, your Honor,
13 there has been absolutely no evidence connecting up politics
14 to the reason why Mr. Wzorek was fired. Whether one agrees
15 or disagrees with the wisdom of the City and the Department
16 of Sewers' employment policies or the way that those policies
17 were implemented during that 1984 probationary career service
18 period, that's not the issue in a Shakman case, your Honor.

19 The only thing that matters for purposes of a
20 Shakman case is the political motivation of the
21 decisionmaker, which I believe Mr. Wzorek has utterly failed
22 to prove. The mere fact that he was pointing out that he
23 had certain political leanings, I don't believe that that is
24 enough to show any sort of motive on the part of the City.
25 There has to be some sort of clear and convincing evidence

1 pointing to Eugene Barnes using politics as the motivating
2 factor, the substantial factor, and that but for that
3 political affiliation Mr. Wzorek would not have been fired.

4 Your Honor, just on a final note, a brief comment as
5 to going to damages, we have already discussed Judge Decker
6 in his '86 ruling has already precluded any sort of damages
7 for emotional or physical harm, but further, as to whether or
8 not Mr. Wzorek had any capability of looking for a job in the
9 intervening four years between the time he was discharged and
10 the time of this trial, your Honor, other than the words that
11 he uttered on the stand, I don't believe there was any
12 competent evidence to show that he was completely incapable
13 of working or even looking for work during that entire four
14 year period, your Honor.

15 I don't believe that the credible weight of the
16 evidence can show or has shown that this man is entitled,
17 even if you were, assuming you were to rule in his favor,
18 that he would be entitled to all of those back pay and damage
19 awards, that the man had a history of being a truckdriver, I
20 believe he testified that he was a union card holding member,
21 that there was -- he never attempted to even go to a union
22 hall to find out what jobs were available to him.

23 THE COURT: I didn't hear you ask him any of those
24 questions on cross-examination.

25 MR. EX: I believe that it was brought out in the

1 examination, your Honor, that he was asked if he possessed a
2 union card and he did and he did reply affirmatively that he
3 did.

4 THE COURT: You asked him if he ever went to any
5 hiring halls, but you didn't ask him if that was the custom
6 and usage in the Teamsters. You didn't ask him what local he
7 was a member of, you didn't ask him any of those questions.
8 You just said, "Did you ever go to any hiring halls?"

9 Well, hiring halls maybe you can go to for the
10 longshoremen or a few other places, but do you know of any
11 hiring halls for the Teamsters Union where people just go
12 down to the hall and wait for people to call them out?

13 Do you know of any hiring halls for truckdrivers?

14 MR. EX: Well, your Honor --

15 THE COURT: That was the question you asked him.

16 MR. EX: Well, your Honor --

17 THE COURT: All I have got is his testimony. I don't
18 have anything from you to the contrary.

19 MR. EX: Your Honor, that point aside, I still think
20 that the overriding point is that there is a lack of
21 competent evidence showing that this man was incapable of
22 ascertaining any type of work, even truck driving related
23 work, which he himself testified that he had been doing for a
24 number of years with the City of Chicago.

25 In conclusion, your Honor, the City would request

1 that you find a judgment in its favor because of the fact
2 that there there has been absolutely no burden of proof
3 established by Mr. Wzorek by that clear and convincing weight
4 of the evidence that political motivation was the reason why
5 Mr. Barnes fired him.

6 Thank you, your Honor.

7 THE COURT: You have the rebuttal now.

8 MR. WZOREK: Your Honor, I thought I handed you one
9 of these yesterday.

10 THE COURT: What does that mean?

11 MR. WZOREK: That shows I couldn't work because I was
12 under depression. It's a doctor's order not to work.

13 THE COURT: Did you give it to them?

14 MR. WZOREK: Maybe this was theirs and I gave you the
15 other one, I think.

16 MR. EX: I have never seen this before today, your
17 Honor.

18 THE COURT: Let me see it. I don't know what you're
19 talking about.

20 MR. WZOREK: Harry Schroeder was supposed to put this
21 in.

22 MR. EX: We would like to object.

23 THE COURT: You say you gave them a copy of this?

24 MR. WZOREK: Harry Schroeder was supposed to do
25 that. I don't know what Harry Schroeder did, your Honor.

1 THE COURT: This is Dr. Borden's thing.

2 MR. WZOREK: Right, the psychiatrist's about not
3 being able to work. I was on heavy medication.

4 THE COURT: No, that's all right. This was taken
5 care of when there was a question of competency.

6 MR. WZOREK: That's right. That's why I didn't
7 understand what he is saying --

8 MS. SMITH: Your Honor, I thought the question of
9 competency went whether to Mr. Wzorek was able to represent
10 himself at trial.

11 THE COURT: That's right.

12 MS. SMITH: Not whether he hasn't worked for the last
13 four years.

14 THE COURT: That's right. He says: "He is under my
15 care for depression and not able to work, but he is fully
16 capable of testifying in court proceedings." You have seen
17 that.

18 MS. SMITH: Quite frankly, we haven't, your Honor. I
19 believe he handed it to you yesterday and we have never seen
20 it.

21 MR. EX: That letter was never, I don't think,
22 tendered to us prior to the proceedings here.

23 THE COURT: Well, that's the letter from Dr. Borden
24 that says that he is under care of depression, but he is
25 competent to testify.

1 MS. SMITH: We have never seen anything saying he has
2 been unable to work for the last four years, your Honor.

3 THE COURT: Okay. Take this, please.

4 MR. WZOREK: Your Honor, the only thing I would like
5 to say is about Eugene Barnes firing me. As he testified on
6 the stand, he gave the power to his subordinates. He went by
7 what they said. By doing that system, your Honor, he left
8 himself open for what they did. He was giving them this
9 power.

10 So in other words, if he didn't know what was going
11 on, it was their authority on the firing and he was accepting
12 this. If you accept what the underlings under you are doing,
13 you're responsible too. It's like the manager of a baseball
14 team. Who gets fired for making the wrong moves, even if he
15 doesn't do it?

16 Another thing, your Honor, is the exit interview I
17 asked of Mr. Young. I didn't get no answer as to the five
18 days that I had coming from 1983. The system in the City of
19 Chicago is that you're kept on the payroll while you're
20 getting your vacation.

21 This was a clear violation. If I was on the payroll
22 I would have made civil service or career service.

23 MS. SMITH: Your Honor, I'm going to have to object.
24 This was not part of our closing argument.

25 MR. WZOREK: The exit interview was.

1 THE COURT: You put that in evidence, Ms. Smith.

2 MS. SMITH: I realize that, your Honor, but this is
3 rebuttal, and it's rebuttal of nothing that we brought up on
4 our closing.

5 THE COURT: It's argument. You put it in evidence
6 and he is saying it's in evidence, and if he had five days
7 coming, then he would have gone past the 1st of July.

8 MS. SMITH: And I'm simply saying he should have
9 brought it out on his closing.

10 THE COURT: Wait, wait, wait. You put it in
11 evidence.

12 MS. SMITH: Your Honor, I'm just preserving for the
13 record the fact that he is on rebuttal now, he is not on his
14 closing argument. We never mentioned the exit interviews in
15 our closing arguments and therefore it's improper rebuttal.

16 THE COURT: Okay, he can't argue it, but it's in
17 evidence, I could see it anyway.

18 MS. SMITH: I accept that, your Honor.

19 THE COURT: All right.

20 MR. WZOREK: So in other words, if I would have had
21 the five days which they did not pay me for, which I'm
22 entitled to from 1983, not from '84, '83, I would have made
23 career service, you're not taken off the roll. I wouldn't
24 have been fired until July 5th, and I would have had the
25 right to a hearing. It's as simple as that.

1 THE COURT: They didn't argue that in their
2 rebuttal, so they don't think you should argue it now.

3 MR. WZOREK: So would I be career service then?

4 THE COURT: Good point.

5 MR. WZOREK: If I'm career service I shouldn't be
6 fired.

7 THE COURT: Okay.

8 MR. EX: If I could just have a short surreply.

9 THE COURT: Sure.

0 MR. EX: Your Honor, just on the point of vacation
1 that he has just brought up, I don't believe that state law
2 -- I believe state law actually is clearly to the contrary --
3 that your vacation time is not a factor or is not part of any
4 consideration of accrual of probationary career service.

5 THE COURT: It says the custom and usage was that it
6 wouldn't be -- he wouldn't be taken off the payroll until
7 after the five days has expired. He was never paid for the
8 time.

9 MR. EX: Well, and I believe the reason he wasn't was
0 because that the City fired him for poor work performance and
1 under that particular standard, that they were not obligated
2 to pay him for vacation time.

3 THE COURT: It says right on the exit interview that
4 they're obligated to pay him.

5 MR. EX: Right, your Honor. I don't think that the

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3 day vac-h-
to me

1 particular exit interview that was filled out by the clerk
2 binds the City legally on that.

3 THE COURT: You put it in evidence. Okay.

4 MR. EX: Well, your Honor, whether it's put into
5 evidence or not, the only last point that I would like to
6 make, your Honor, is that I don't think that the evidence
7 showed in any way that Mr. Barnes gave the authority to fire
8 to anybody. Whether or not he delegated responsibilities of
9 people to carry out his policies, all administrators have to
10 do that, your Honor, in a large twelve --

11 THE COURT: Pontius Pilate did it too, didn't he?

12 MR. EX: Excuse me?

13 THE COURT: Pontius Pilate washed his hands, said he
14 wasn't to blame.

15 MR. EX: Your Honor, whether or not there are people
16 at lower levels that are doing things that no one could
17 possibly have control of, there has been no evidence, I don't
18 think, your Honor, first of all conclusively showing --

19 THE COURT: Now you're getting into other stuff.

20 MR. EX: I'm sorry, your Honor.

21 THE COURT: That's enough argument.

22 MR. EX: I would just like to make a point that he
23 never delegated his authority to fire anyone.

24 THE COURT: That's extraneous argument. I wouldn't
25 ever in a million years compare Gene Barnes to Pontius

□
Check Young?
Double
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1 Pilate. I happen to think Gene Barnes is a very fine man --
2 I have always thought so -- but I think there is no question
3 at all that the petitioner has proven that he was fired for
4 political reasons beyond -- with clear and convincing
5 evidence. The petitioner was fired for political reasons,
6 period.

7 Now, I'll go into further explanations of that, but
8 at this time I want to defer the matter and set it for a
9 future date because I think that in order to tie all these
10 ends properly together the petitioner needs an attorney to
11 help him. It's a complicated mess right now. And I think he
12 will be able to get an attorney under the circumstances to
13 help him complete his responsibilities in this respect.

14 So I'll put this over for ten days for status date
15 to see if Mr. Wzorek can get somebody to come in and help him
16 straighten this thing out, and during which time I won't make
17 this a final order because I want to hear from that attorney
18 and from you in terms of proposed findings of fact, but I
19 will tell you that it is clear to me, and I can support it if
20 you wish right now on some oral discussion, but I want to
21 make it clear with a written order that the petitioner was
22 fired for political reasons, and he has proven that in my
23 opinion with clear and convincing evidence.

24 I will detail that with a memorandum order. And
25 I'll give him ten days to get a lawyer to help him come in

for all the post trial matters.

(Adjournment to July 18, 1988, at 9:30 a.m.)